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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,855	01/21/2004	Carl A. Forest	013194.0101DIUS	5924
24283	7590	01/14/2005	EXAMINER	
PATTON BOGGS 1660 LINCOLN ST SUITE 2050 DENVER, CO 80264			JONES, SCOTT E	
			ART UNIT	PAPER NUMBER
			3713	

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/762,855	Applicant(s) FOREST, CARL A.	
	Examiner Scott E. Jones	Art Unit 3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This office action is in response to the amendment filed on October 19, 2004 in which applicant amends claims 31, 32, 34, 38, 41, 42, 50, 52, 55, 57, 58, 60, and 61 and responds to the claim rejections.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 31-61 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 of U.S. Patent No. 6,757,572. Although

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the conflicting claims are not identical, they are not patentably distinct from each other because it would be obvious to store expert actions in a computerized system memory and provide expert advice when a player is in a particular situation, rather than, storing and providing general advice as is similarly disclosed in U.S. 6,757,572.

Response to Arguments

4. Applicant's arguments, see pages 7-11, filed October 19, 2004, with respect to claims 31-61 are rejected under 35 U.S.C. 101, the rejection to claims 31-61 under 35 U.S.C. 112, first paragraph, the rejection to claims 31-34, 40-42, 46-51, 53-56, and 58-61 under 35 U.S.C. 102(b) as being anticipated by Fisher (U.S. 5,507,485), the rejection to claims 35-39 under 35 U.S.C. 103(a) as being unpatentable over Fisher (U.S. 5,507,485) in view of Wilens (U.S. 5,779,566), and the rejection to claims 43-45, 52, and 57 under 35 U.S.C. 103(a) as being unpatentable over Fisher (U.S. 5,507,485) in view of Baker (U.S. 5,486,001) have been fully considered and are persuasive. The rejections to claims 31-61 under 35 U.S.C. 112, first paragraph, the rejection to claims 31-34, 40-42, 46-51, 53-56, and 58-61 under 35 U.S.C. 102(b) as being anticipated by Fisher (U.S. 5,507,485), the rejection to claims 35-39 under 35 U.S.C. 103(a) as being unpatentable over Fisher (U.S. 5,507,485) in view of Wilens (U.S. 5,779,566), and the rejection to claims 43-45, 52, and 57 under 35 U.S.C. 103(a) as being unpatentable over Fisher (U.S. 5,507,485) in view of Baker (U.S. 5,486,001) have been withdrawn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott E. Jones whose telephone number is (571) 272-4438. The examiner can normally be reached on Monday - Thursday, 6:30 A.M. - 5:00 P.M..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott E. Jones
Examiner
Art Unit 3713



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